2015 LSBC 44
Decision issued: September 30, 2015
Oral decision on Facts and Determination: July 23, 2015
Citation issued: July 18, 2014
Citation amended: May 11, 2015

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

DAVID JACOB SIEBENGA

RESPONDENT

DECISION OF THE HEARING PANEL
ON FACTS, DETERMINATION AND DISCIPLINARY ACTION

Hearing date:	July 23, 2015
Panel:	David Mossop, QC, Chair Carol J. Gibson, Public representative David Layton, Lawyer
Discipline Counsel:	Kieron Grady
Counsel for the Respondent:	Robyn Jarvis

BACKGROUND

Introduction

[1] The Respondent represented MG in two court actions. In the first court action, which was a debt action, the Respondent filed affidavits and took the position that his client had no legal or beneficial interest in a piece of property. Subsequently, in another action, the Respondent took the position that his client had an equitable interest in the same piece of property. The Supreme Court Judge held that this was

an abuse of the court process and awarded special costs against the Respondent in the amount of $6,000.

[2] The Respondent admits that he engaged in professional misconduct and specifically an abuse of court process.

[3] Consequently, the only matter in dispute is the appropriate disciplinary action. The position of the Law Society of British Columbia is that a suspension of one month is appropriate. The position of the Respondent is that a fine, between $5,000 and $8,000, is the appropriate disposition of this matter.

[4] Despite the thorough and eloquent presentation of counsel for the Respondent, this Hearing Panel believes a one-month suspension is appropriate in these circumstances.

Citation

[5] The amended citation addresses the Respondent as follows:

1. Between approximately March 2012 and June 2012, in the course of representing your client, MG, as defendant in an action filed in the Supreme Court of British Columbia, Vancouver Registry Action No. [number], you proffered evidence to the court that your client had no legal, beneficial or equitable interest in his mother's half interest in property located in Surrey, BC when you knew or ought to have known that he was claiming a legal, beneficial or equitable interest, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook* then in force.

   This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

2. You acted as counsel for MG in his capacity as plaintiff in the Supreme Court of British Columbia, New Westminster Registry Action No. [number] against his mother wherein your client claimed a legal, beneficial or equitable interest in his mother's half interest in property located in Surrey, BC at the same time that you acted for your client in his capacity as defendant in the Supreme Court of British Columbia, Vancouver Registry Action No. [number] wherein your client disavowed any such interest in the same property, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook* then in force.

   This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

3. In the alternative to allegation 2, you acted as counsel for MG in his capacity as plaintiff in the Supreme Court of British Columbia, New Westminster Registry Action No. [number] against his mother wherein your client claimed a legal, beneficial or equitable interest in his mother's half interest in property located in Surrey, BC after having acted for your client in his capacity as defendant in the Supreme Court of British Columbia, Vancouver Registry Action No. [number], wherein your client disavowed any such interest in the same property, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook* then in force.

   This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

Evidence and admission

[6] The following evidence was led at the hearing:

(a) An agreed statement of facts;

(b) Various documents, including letters of reference;

(c) The oral testimony of the Respondent.

[7] The Respondent admitted professional misconduct as alleged in allegations 1 and 2 of the amended citation. Allegation 3 was stated to be in the alternative to allegation 2. The Hearing Panel adjourned for a few minutes and issued an oral decision confirming the finding of professional misconduct, with written reasons to follow. The rest of the proceeding dealt with the issue of the appropriate disciplinary action. This procedure is consistent with Rules 4-43 and 4-44 and in particular, Rule 4-44(2).

Overall issues

[8] This Hearing Panel must decide two issues. First, did the Respondent commit professional misconduct? Second, is the appropriate disciplinary action a fine or a one-month suspension?

FACTS

[9] The Respondent acted for MG, who was a defendant in a commercial debt dispute (the "First Action").

[10] MG had a half interest in residential property owned as a joint tenant with his mother, KG. That property was encumbered. In the First Action, the Respondent had MG swear an affidavit that MG had no equitable or beneficial interest in KG's half share of the property and that KG was not holding her interest in the property in trust for MG. He also obtained an affidavit from KG attesting to that fact.

[11] About six weeks after drafting and commissioning those two affidavits, the Respondent put KG on notice, by way of a draft Notice of Civil Claim, that his client was seeking an interest in KG's half of the property.

[12] MG subsequently sued KG, asserting an interest in her half interest in the property (the "Second Action").

[13] KG retained counsel, who eventually became aware of the affidavits filed by MG and KG in the First Action. KG's counsel put the Respondent on written notice that, in her view, it was not now open to MG to assert an interest in KG's half of the property, and that, if the Second Action proceeded to hearing, she would seek special costs against the Respondent.

[14] The Respondent then filed an Amended Notice of Civil Claim. Whereas the initial Notice of Civil Claim had alleged that KG was holding the property in trust for MG, the Amended Notice of Civil Claim removed the trust allegation and simply alleged that there was agreement that KG would hold the proceeds from any sale of the property for MG.

[15] KG brought an application to summarily dismiss MG's claim. In granting this application, the chambers judge stated in his reasons for judgment:

> [9] In the present action, [MG] is asking the court to be prepared to recognize the possibility of him having a beneficial interest – that is, an interest recognized in equity – to the sale proceeds, while at the same time having disavowed any such interest in his affidavit filed in the First Action. His position is simply untenable.
>
> [10] I find for the defendant on this application. The action is dismissed, and there will be a declaration of entitlement of the defendant to the funds now being held in trust and a direction of payment as necessary.

[16] The chambers judge also ordered special costs of $6,000 against the Respondent, stating:

> [16] In the face of that affidavit, which Mr. Siebenga acknowledges he took on instructions from his client, Mr. Siebenga ought not to have filed the

> notice of civil claim. The sworn affidavit evidence of his client, and the allegations in the notice of claim, are in stark contrast. He filed this notice of claim just six weeks after the affidavit was sworn. The claim being advanced was untenable, the filing of the claim was an abuse of process, and in filing such a claim Mr. Siebenga was in breach of his duty to the court. [MG] may have had views of his entitlement to the Property, but those were views which were not capable of being legitimately asserted, and Mr. Siebenga ought not to have taken his client's instructions to commence the action.
>
> [17] Furthermore, when his client's affidavit evidence came to light, Mr. Siebenga then attempted to address the defendant's objections, through amendment of the notice of civil claim, by making a contrived allegation which was patently untenable. This, too, was an abuse.

[17] The Respondent admits that the position he asserted on behalf of his client in the Second Action was untenable given the position he asserted on behalf of his client in the First Action, that doing so constituted an abuse of process of the court. He further admits that he ought to have known that his conduct resulted in an abuse of process of the court, and that his conduct amounts to professional misconduct in the circumstances. The Respondent states that he did not intend to abuse the process of the court. The Law Society accepts this assertion.

DID THE RESPONDENT COMMIT PROFESSIONAL MISCONDUCT?

[18] The parties agree that the Respondent committed professional misconduct in regards to the amended citation. Specifically, they agree that the Respondent engaged in an abuse of the court process, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*, then in force, which reads:

> A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice.

[19] We are satisfied that the Respondent's admitted actions represent a marked departure from the conduct the Law Society expects of lawyers, and thus amounts to professional misconduct as defined in *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph 171.

IS THE APPROPRIATE DISCIPLINARY ACTION A FINE OR A SUSPENSION?

[20] In *Law Society of BC v. Lessing*, 2013 LSBC 29, the Review Panel confirmed that the starting point in determining the appropriate disciplinary action to be imposed under section 38(5) and (7) of the *Legal Profession Act* is a consideration of the Law Society's mandate under section 3 of the *Act*. Section 3 provides as follows:

> 3. It is the object and duty of the society to uphold and protect the public interest in the administration of justice by
>
> (a) preserving and protecting the rights and freedoms of all persons,
>
> (b) ensuring the independence, integrity, honour and competence of lawyers,
>
> (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
>
> (d) regulating the practice of law, and
>
> (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[21] Also relevant are the following comments from *Law Society of BC v. Ogilvie*, 1999 LSBC 17:

> [9] Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct. Section 38 of the *Act* sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. *In determining an appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.*
>
> [10] The criminal sentencing process provides some helpful guidelines, such as: the need for specific deterrence of the respondent, the need for general deterrence, the need for rehabilitation and the need for punishment or

denunciation. In the context of a self-regulatory body one must also consider the need to maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of its members. While no list of appropriate factors to be taken into account can be considered exhaustive or appropriate in all cases, the following might be said to be worthy of general consideration in disciplinary dispositions:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact upon the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

[emphasis added]

[22] The Review Panel in *Lessing* observed that not all the *Ogilvie* factors will come into play in all cases and the weight to be given these factors will vary from case to

case but noted that the protection of the public (including public confidence in the disciplinary process and public confidence in lawyers generally) and the rehabilitation of the respondent, are two factors that, in most cases, will play an important role. The Panel stressed, however, that where there is a conflict between these two factors, the protection of the public, including protection of the public confidence in lawyers generally, must prevail.

The nature and gravity of the conduct proven

[23] There is no doubt the Respondent's actions constitute serious misconduct. It is a grave matter for any lawyer to abuse the court process.

[24] The Respondent was primarily a solicitor and did very little litigation. He testified that his misconduct was the result of a failure to research the applicable law adequately and/or to refer the matter to a lawyer experienced in litigation.

[25] Yet it should be evident to any lawyer, no matter how inexperienced in litigation, that it is fundamentally improper to assert a certain set of facts in one action and a diametrically opposed set of facts in another related action. In doing so, the lawyer is abusing the court process and is in breach of his duty to the court. We therefore view the Respondent's misconduct as serious and do not accept his proffered explanation as a mitigating factor.

The age and experience of the Respondent

[26] The Respondent is a senior lawyer. He was called to the bar in 1987. The Respondent has practised primarily as a solicitor focusing on real estate conveyancing. As noted, he does very little litigation.

[27] If the Respondent had been a junior lawyer, doing primarily solicitor work, some consideration might be given for "mission creep." Mission creep happens when a lawyer slips into an area of the law with which he or she is unfamiliar. It is to be avoided no matter the lawyer's level of experience. But a senior lawyer in particular should know better than to get caught up in such a situation.

[28] Moreover, the Respondent had a litigation lawyer working in the office. Yet he did not seek out her input or assistance. He also knew that the Law Society's ethics advisors were available to provide advice, but failed to consult them. He failed to consult even after receiving a warning letter from the lawyer on the other side.

[29] These are aggravating factors.

The previous character of the Respondent, including details of prior discipline

[30] We will set out the position of the parties and then the position of the Hearing Panel.

Position of the Law Society

[31] The Respondent has a significant Professional Conduct Record (PCR) that militates in favour of a more significant disciplinary sanction than might otherwise be the case. The Respondent's PCR consists of two conduct reviews (1996 and 1998), two citations (issued August 1993 and January 2004), and two referrals to Practice Standards (June 1997 and September 2004).

[32] The two Practice Standards referral matters were open for approximately four years on both occasions. While, at first glance, it might appear that the Respondent's conduct for which he has previously been disciplined or otherwise involved with the Law Society (e.g., Practice Standards) is unrelated to the conduct in this case, it is suggested that the common thread that runs through almost all of the Respondent's interactions with the regulatory divisions of the Law Society is competency concerns (with the possible exception of the 1993 citation).

[33] With respect to the 1996 conduct review report in the Respondent's PCR, the Subcommittee noted:

> Mr. Siebenga said that it was difficult to keep up with changes in the law and continuing legal education matters. The Committee urged Mr. Siebenga to attend continuing legal education courses, and to explore other ways to keep up with legal and practice issues.

[34] That conduct review took place as a result of a complaint in relation to an undertaking, and it is apparent from reading the report that the Subcommittee had concerns about a number of matters in relation to the Respondent's.

[35] Similarly, with respect to the 1998 conduct review in the Respondent's PCR, the conduct review report noted that "Four concerns were expressed to Mr. Siebenga about his conduct." The report noted that the Subcommittee believed that the Respondent's conduct and responses indicate that "his judgment is lacking to a significant and troubling degree." The Subcommittee recommended that the matters mentioned in that report be referred to the Competency Committee (now Practice Standards Committee) for consideration in the course of their on-going practice review.

[36] With respect to the Respondent's first interaction with Practice Standards, a Practice Review Report dated December 3, 1997 noted concerns about the Respondent's knowledge of substantive and procedural law in all areas in which he then practised.

[37] Ultimately, the Respondent confirmed that he would stop practising in the wills and estates areas until he could master the remedial studies materials provided to him.

[38] In a follow up Practice Review Report, one of the recommendations was that the Respondent consider his current areas of practice and that, if he intended to continue offering services in the fields of corporate records and civil litigation defence, he ensure he had systems in place to carry out his responsibilities to the clients adequately or, alternatively, cease practising in those areas.

[39] Similarly, the Respondent's second citation, which was issued in January of 2004 and heard in October of 2004, dealt with a conflict situation wherein he acted for a number of parties to a transaction and failed to disclose a profit. Of note, in the agreed statement of facts in that matter, the Respondent stated that he "assured the Law Society that he did not knowingly or intentionally mislead Mr. A as to the apparent profit of Mr. S (or others) made from the difference between the Property's purchase price in the First Transaction and the Property's sale price in the Second Transaction." (page 3)

[40] This is, of course, similar to the Respondent's statement in the present case that, although he admits abusing the process of the court, he did not do so knowingly or intentionally. In other words, both matters reflect concerns regarding the Respondent's competence.

[41] Given that the Respondent has previously been fined for two citations, it is submitted that the concept of progressive discipline supports the imposition of a short suspension in this case. Fining the Respondent again, given his PCR, will not ensure public confidence in the legal profession. The increased sanction of a suspension will send a message to the public and the legal profession that the Law Society will not tolerate lawyers who repeatedly ignore their professional responsibilities.

Position of the Respondent

[42] The Respondent recognizes that a previous disciplinary history is typically considered an aggravating factor that requires an increase in the sanction to be imposed beyond the range of sanction imposed for similar misconduct by respondents without a disciplinary history. He nonetheless argues that the previous

disciplinary matters were not of a similar nature, did not involve matters of dishonesty and that the last disciplinary matter occurred over ten years ago.

[43] In addition, counsel for the Respondent points out that the Respondent has learned from his past mistakes. He is now in a partnership with a lawyer who has in place systems that the Respondent previously seemed to lack. The Respondent has restricted his practice areas.

[44] Finally, the Respondent submitted a number of letters of reference attesting to his good character, community work, high standing in the profession and family challenges at the time of the professional misconduct.

Finding of the Panel

[45] In *Lessing*, at para. 71, the Review Panel listed a number of non-exclusionary factors to be considered, before applying progressive discipline. These include:

(a) dates of the matters contained in that conduct record;

(b) the seriousness of the matters;

(c) the similarities of matters to the matters before the Panel;

(d) the remedial actions taken by the Respondent.

[46] The Respondent's PCR covers a span of time from 1993 to 2008, at which point he ceased to be subject to a Practice Standards referral. During this time there were two conduct reviews and one other Practice Standards referral, along with two successful citations for professional misconduct. This is a significant PCR, which favours the application of progressive discipline.

[47] Lawyers who have been found to have committed professional misconduct on two occasions and fined on both occasions, are candidates for suspension on a third citation. This does not mean "three strikes and you're out." Rather, it means three strikes and you may be out depending on the circumstances. To put it another way, lawyers who have been found to have committed professional misconduct on two occasions are put in a state of "heightened possibility" of being suspended. A hearing panel should seriously consider issuing a suspension, instead of a fine.

[48] Additionally, we agree with counsel for the Law Society that there is a common thread that runs through the PCR, namely, concerns about the Respondent's competency and judgment. Similarity to the matter before this Hearing Panel does not require exact correspondence; such as all the previous matters were breach of

undertaking. Rather, similarity should be interpreted broadly. Although similarity is not required for the application of progressive discipline, the presence of similarity is more likely to have progressive discipline applied.

[49] Another factor pointing to progressive discipline is the fact that the Respondent seems to be progressing into more serious professional misconduct situations. The first citation dealt with advertising and referrals. That was in 1993. The 2004 citation, which dealt with a conflict of interest, was a more serious matter. Finally, this citation deals with a very serious matter, abuse of the court process. During this time, there were also conduct reviews and Practice Standards referrals. Progression in the seriousness of the professional misconduct should be matched with a progression in the type of disciplinary action.

[50] In this case, we have a progression in the seriousness of the professional misconduct, coupled with underlying problems with the Respondent's practice. Sometimes, lawyers who have been fined on two occasions begin to look upon a fine as a cost of doing business. A fine ceases having the necessary impact, even if it is for a large amount. In such situation, a suspension is more appropriate. In the last two citations, the Respondent readily admitted his errors and paid the fines and costs. In this case he is just proposing a higher fine.

[51] The Respondent submitted a number of letters of reference. None indicates that the writers had read the agreed statement of facts or the PCR submitted by the Law Society. Therefore, the letters are of limited value.

[52] Counsel for the Respondent stressed the remedial action taken by the Respondent in response to the PCR. He entered into partnership with a lawyer who has comprehensive systems in place for the practice of law. He has restricted the areas of law that he will practise. He should be congratulated for doing this. However, these actions go more to the direct protection of clients and the public. They do not show a fundamental shift in attitude in the way he practises law generally, in particular his duty to act in good faith with respect to the courts and litigants. Otherwise, he would not have had special costs awarded against him by the chambers judge for abusing the court process.

[53] Overall, the Respondent's PCR is an aggravating factor pointing to suspension.

The impact upon the victim

[54] The Respondent's actions had an adverse impact on KG. She had to retain counsel to defend the Second Action and bring an application to dismiss it. There was also

a delay in receiving the sales proceeds. This cost her money, although this harm is counterbalanced to a certain degree by the award of special costs.

[55] Overall, this factor is aggravating.

The advantage gained or to be gained by the Respondent

[56] The Respondent did not gain anything by his misconduct. In particular, he did not charge a fee to his client MG.

[57] This factor is mitigating.

Whether the Respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances

[58] The Respondent admits his professional misconduct. He did so when first contacted by the Law Society. In most cases, this would be a mitigating factor. However, he had no real choice. The chambers judge had held that he had engaged in an abuse of the court process. Overall this is neutral factor.

[59] There are two mitigating factors. First, the Respondent did not charge his client, MG, a fee. He also has decided not to practise litigation in the future.

[60] The Respondent raised the issue of certain family challenges he has faced during much of his career, including during the time period in question. However, we give little weight to this factor. Many lawyers face family challenges and still avoid abusing the court process. It certainly cannot be said that the challenges in question directly or even indirectly led to the professional misconduct.

The possibility of remediating or rehabilitating the Respondent

[61] The Respondent's PCR indicates that, on numerous occasions in the past, he has promised to improve his practice. To a certain degree, he has done this. He has gone into partnership with a well-organized lawyer. She has comprehensive office systems that will help the Respondent in his practice. He has restricted his practice. However, as counsel for the Law Society emphasized, there is still a lack of judgment and competence as indicated in the finding of abuse of the court process. This Hearing Panel concludes that a fine, even a large one, will have little impact on the Respondent in terms of rehabilitation. It has not worked in the past.

The impact upon the Respondent of criminal or other sanctions

[62] The Respondent has already paid special costs, which might be a mitigating factor in determining the amount of a fine, but is less helpful in relation to the question of whether a fine or suspension is called for.

The impact of the proposed penalty on the Respondent

[63] A suspension is harder on the Respondent than a fine. He will have to notify his clients in writing that he has been suspended. A public notice will be put on the Law Society website. Usually, there is also a notice published in a newspaper. Needless to say, there is a significant disruption to his practice. For those reasons, lawyers usually seek a fine instead of a suspension.

[64] The Respondent pointed out that, not only would he suffer, but other members of his firm would suffer as well. Staff might have to be laid off. His partner may suffer a loss of income and would have the additional pressure of running the practice on her own. She not only carries on a busy practice; she also has five children. However, we believe these problems can be solved by timing and planning.

[65] A few years ago, the Respondent took two months off to go to Europe with his son. This required lead time and planning. If this can be done for a well-deserved holiday, it can be done for a suspension.

[66] Counsel for the Respondent suggested the best time for a suspension would be the first 15 days in November 2015 and the first 15 days in December 2015. Alternately, this can be done in any two 15-day periods, provided the total 30-day suspension is completed by May 31, 2016. Or the parties can agree to another time period, again provided the entire suspension is served by May 31, 2016. This will give plenty of lead time to the Respondent.

[67] Overall there is no doubt that a suspension will have a greater effect on a single practitioner or small firm than a suspension would have on a large firm. But firm size is not enough to avoid a suspension. Otherwise, size would immunize a class of lawyers from suspension. This would not be in the public interest: see *Law Society of BC v. Bauder*, 2013 LSBC 07 at para. 19.

The need for specific and general deterrence

[68] There is a need for both specific and general deterrence.

[69] As indicated above, the Respondent's PCR reveals a pattern of incompetence and/or bad judgment that began long before the events relevant to this citation. In the two previous citations, the panels imposed fines instead of suspensions. A stronger message is required this time to promote specific deterrence.

[70] As for general deterrence, there is a need to send a clear message to the profession that the Law Society will not tolerate lawyers abusing the court process by conducting litigation so as to risk misleading the court.

The need to ensure the public's confidence in the integrity of the profession and the range of penalties in similar cases

[71] The parties were unable to provide a case where a lawyer has been cited solely for abuse of the court process. Counsel for the Law Society did provide two cases in which the citations included allegations of abuse of process: *Law Society of Alberta v. Koska*, [2014] LSDD No. 332; *Law Society of Upper Canada v. Wysocky*, [1997] LSDD No. 164. However, in these cases, the citations also included other allegations, and the ultimate disciplinary action therefore provides little assistance to this Hearing Panel.

[72] This Panel believes the most useful case is *Lessing*. In that case there were two citations. The first citation referred to the lawyer's failure to report unsatisfied judgments. That citation is not relevant here.

[73] The second citation is relevant here. In that citation, the lawyer had breached court orders and was found in contempt of court. The lawyer later purged himself of the contempt. The focus of the Review Panel, in a disciplinary action, was the contempt of court and role of the lawyer's mental health challenges. In *Lessing*, the Review Panel held in part that that the finding of contempt of court demanded a suspension to promote public confidence in the profession generally and in the disciplinary process.

[74] Contempt of court is similar to a lawyer abusing the court process. Both involve a breach of the lawyer's duty to the court. They are serious matters of professional misconduct. Any disciplinary action must satisfy public confidence in the legal profession generally and public confidence in the disciplinary process.

[75] One might argue that *Lessing* is distinguishable. The lawyer's actions in that case were deliberate, and there was an additional citation for failure to report unsatisfied judgments. In this case, there was no intent to abuse the process of the court. However, in *Lessing*, the Review Panel would have imposed a longer suspension except for the lawyer's mental health issues. In other words, mental health issues

diluted the lawyer's intent. Also, significant professional conduct issues can lead to suspension. See *Law Society of BC v. Martin*, 2007 LSDD No. 170 at par. 41. Being found in contempt and abusing the court process are both significant professional issues.

[76] No two cases are the same, but *Lessing* provides some support for this Panel imposing a one month suspension.

SUMMARY

[77] Having considered all of the relevant factors, in our view a 30-day suspension is the appropriate disciplinary action, in particular given the seriousness of the misconduct and the need for progressive discipline in light of the Respondent's PCR.

ORDER

[78] This Hearing Panel orders the following:

(a) The Respondent be suspended for 30 days to be served: (i) in the first 15 days in November 2015 and the first 15 days in December 2015; or (ii) during any other time period agreed upon by the parties, provided the total 30-day suspension is completed by May 31, 2016.

(b) If either of the parties wishes to make additional submissions on costs, they may do so within 30 days of the date of this decision. The other party will have 14 days to make a response. Otherwise, the Hearing Panel orders costs in the amount of $6,172.50 payable by December 31, 2015.

(c) This Hearing Panel retains jurisdiction to deal with any issue regarding the timing of the suspension on the application of either party.

(d) Allegation 3 in the amended citation is dismissed.